

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Elephants of Mercy, LLC c/o Jason DiCaprio

Date application filed with the Town Clerk: January 6, 2009

Nature of request: Special Permit to transfer ownership of the Moan and Dove as per condition 11 of ZBA FY 2003-00010 under Section 10.34 of Zoning Bylaw.

Address: 460 West Street (Map 20C, Parcel 9, B-VC Zone)

Legal notice: Published on January 26 and February 2, 2009 in the Daily Hampshire Gazette and sent to abutters on January 23, 2009.

Board members: Thomas Simpson, Barbara Ford, Hilda Greenbaum

Submissions:

The petitioner submitted a packet of information with the application including:

- One (1) copy of the ZBA application filed with the Town Clerk, January 6, 2009;
- One (1) copy of a Project Summary, dated December 29, 2008;
- One (1) copy of the completed Management Plan form and attachments;
- One (1) copy of the Floor Plan, prepared by the applicant, with no proposed changes;
- One (1) copy of the existing sign plan, with no proposed changes;
- One (1) copy of the Site Plan for 460 West Street, with no proposed changes.
- One (1) copy of the Special Permit ZBA FY2003-00010, submitted by staff.

Site Visit: February 9, 2009

Thomas Simpson, Barbara Ford and Hilda Greenbaum met with the applicants, Jason and Nate DiCaprio, at the site and observed the following:

- The existing commercial building containing a gym, restaurant, barber shop and retail uses situated on the east side of West Street with access from West street and Pomeroy Lane;
- A multi-unit residential housing development to the east, Hess gas station immediately to the south, West Street (Rt. 116) to the west, and a vacant parcel to the north;
- The parking spaces located immediately in front of the proposed restaurant;
- The interior of the existing establishment, known as the Moan and Dove, including restrooms and kitchen area.

Public Hearing: February 10, 2009

The applicant, Jason DiCaprio was accompanied by his brother, Nate DiCaprio. Jason DiCaprio presented the following information related to the application:

- They are seeking to transfer the Special Permit, ZBA FY2003-00010 issued to Daniel Lanigan to Elephants of Mercy, LLC, managed by Jason DiCaprio;
- They are not changing any aspect of the current day to day operation of the business.

When asked, Mr. DiCaprio explained to the Board that during the site visit, he was informed that the current owner may not be in compliance with the requirement to prepare, serve and have food available on-site.

He stated that they do intend to prepare food on-site and that he believed that the food issue would have been discussed with the Select Board. The Board was provided with a sample menu and revised Management Plan which reflects that food will be prepared on-site and available at all times that alcohol is served. Mr. DiCaprio explained that the Management Plan was updated to show that food will be prepared on site, in accordance with the law.

Mr. Simpson confirmed that with the exception of the food preparation, there will be no other changes to the layout, number of employees, or hours of operation. Mr. DiCaprio stated that there will be no other changes.

Mr. Simpson asked if they will be preparing any fried food on-site. Mr. DiCaprio stated that they will not be frying food but will likely utilize grills for paninis (grilled sandwiches). He added that the existing owner currently has a common victualler's license to operate the kitchen.

Ms. Greenbaum asked how many employees they will need. Mr. DiCaprio stated that they would likely have four (4) employees, but would like to have an option to have more employees.

Mr. Simpson asked if either of the applicants were currently employed there. Mr. DiCaprio stated that he has been a bartender there for three (3) years.

Ms. Greenbaum asked if all the bar staff have the equivalent of Serv Safe Alcohol training. Mr. DiCaprio stated that all bar staff is TIPS certified and people responsible for food preparation will be trained and certified.

Ms. Ford asked about the maximum occupancy of the building. Mr. DiCaprio stated that they are limited to 50 patrons and 4 employees.

Ms. Weeks stated that the occupancy load of the building is 54 people, including employees, and if there are any more than 4 employees, the number of patrons would have to be reduced.

Ms. Weeks stated that if the food production creates any grease producing vapors, such as a panini grill, a hood may be required.

Mr. Simpson asked if the lights are dimmed after a certain hour. Mr. DiCaprio replied that the lights are currently dimmed slightly after 10:00 P.M.

Mr. Simpson noted that the dimming of lights could trigger the restaurant and bar use to be categorized as a nightclub or similar use, which may have more strict fire and safety requirements.

The applicant stated that they would no longer dim the lights inside the restaurant.

Ms. Ford asked if there will be any entertainment inside the restaurant. Mr. DiCaprio replied that they will continue to use a stereo and they do not intend to have a jukebox or live entertainment. He added that the volume of the music is not heard outside.

Mr. Simpson asked if any members of the public would like to speak.

Fred Hartwell, 60 North Whitney Street, stated that he has been at the site and that the music cannot be heard outside. He added that he does not recall a hood being used at other establishments in the area that serve paninis.

Ms. Greenbaum made a motion to close the evidentiary portion of the hearing. Mr. Simpson seconded the motion. The Board voted unanimously to close the public hearing.

Public Meeting:

Mr. Simpson stated that he does not see any reason to deny the application to transfer the ownership. The Board agreed.

The Board discussed the number of employees and determined that they would allow additional employees, contingent upon the number of patrons being reduced such that the total occupancy of 54 people is not exceeded. The Board determined that food shall be prepared on-site and available until 15 minutes prior to closing and the interior lights shall not be dimmed during hours of operation.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district. The use is allowed in the B-VC District by Special Permit. The space has been utilized as a restaurant/bar for many years without causing negative impacts, and no members of the public objected to the transfer of ownership. There are no changes to the occupancy, nature of the use, parking area or exterior as part of this application.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. There are no changes to the nature or extent of the use of this restaurant/bar which has been in operation for many years. The building already contains similar uses, all new lighting will be downcast, there will be no outdoor dining on the premises and all signage and exterior facades remain unchanged.

10.384 and 10.387 - Adequate and appropriate facilities will be provided for the proper operation of the use and will provide convenient and safe movement. The applicant has submitted a Management Plan for the operation of the restaurant/bar use including the number of employees and location of trash and recycling necessary for the operation. The maximum occupancy of the space is limited to 54 people, in accordance with Building Code requirements. The property contains adequate parking for the restaurant/bar use, including several spaces immediately adjacent to the use.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The transfer of ownership will not alter the existing parking or signage on the property which contains adequate parking during peak hours of operation in accordance with Section 7.2 of the Bylaw. There are no changes to the previously approved exterior wall-mounted sign which is in accordance with 8.20 of the Bylaw.

10.388 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use. In accordance with the submitted Management Plan, all deliveries of goods and products will be through the door on the south side of the building, and will not interfere with other uses.

10.393 -The proposal provides protection of adjacent properties by minimizing the intrusion of lighting.

The subject property is situated adjacent to other similar food and retail establishments with similar hours of operation, and adjacent to a 24 hour gas station/ convenience store. The existing exterior lighting is directed toward the building and will not intrude onto or impact any adjacent properties.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The proposal to transfer ownership of the existing establishment does not include any changes to the nature or extent of the existing use, exterior of the building, parking area or lighting. The continued use of the restaurant/bar is allowed by Special Permit in the B-VC District and a Management Plan has been submitted and reviewed as part of this permit.

Public Meeting - Zoning Board Decision:

Mr. Simpson made a motion to APPROVE the application, with conditions. Ms. Ford seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit to allow for the transfer of ownership of the Moan and Dove, a Class II restaurant, as per condition 11 of ZBA FY2003-00010 under Section 10.34 of the Zoning Bylaw, as applied for by Elephants of Mercy, LLC, at 460 West Street (Map 20C, Parcel 9, B-VC Zone), with conditions.

THOMAS SIMPSON

BARBARA FORD

HILDA GREENBAUM

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to allow for the transfer of ownership of the Moan and Dove, a Class II restaurant, as per condition 11 of ZBA FY2003-00010 under Section 10.34 of the Zoning Bylaw, as applied for by Elephants of Mercy, LLC, at 460 West Street (Map 20C, Parcel 9, B-VC Zone), with the following conditions.

1. The hours of operation shall not exceed 11 a.m. to 1 a.m. seven days a week.
2. Food shall be prepared on-site and shall be available at all times during hours of operation until 15 minutes before the close of the restaurant.
3. The restaurant shall be managed according to the Management Plan presented and approved at the public hearing of February 10, 2009.
4. Music shall not be audible from outside the premises. Any change in the provision of music, such as the addition of live entertainment, shall require an amendment to this permit.
5. There shall be no more than 7 employees on the premises at any one time.
6. The maximum occupancy load of the restaurant shall be 54 people, including employees.
7. All employees who serve alcohol shall be appropriately trained and certified in Serv Safe Alcohol or comparable alcohol service courses.
8. Interior lighting shall be maintained at safe levels at all times. There will be no low-level interior lighting allowed after dark and during hours of operation.
9. All refuse shall be disposed of using the dumpster on the north side of the building.
10. No pool tables or arcade-type games, or other automatic amusement devices shall be installed on the premises without an amendment to this permit.
11. Employees shall park in the southeast or northeast corners of the parking lot at all times.
12. All deliveries shall be received through the rear (east) door of the restaurant.
13. Any change in signs shall be submitted to and approved by the Zoning Board of Appeals at a public meeting prior to installation.
14. This permit shall expire upon change of ownership.

Thomas Simpson, Chair
Amherst Zoning Board of Appeals

DATE